Applicants' claimed structure is not anticipated by Timmons. Claim 1 recites a permanent character graphic. The term "character graphic" is described in the specification beginning at pg. 6, line 10 and refers to "a graphic containing an anthropomorphous image, and in particular an image having or suggesting human form or appearance which ascribes human motivations, characteristics or behavior to inanimate objects, animals, natural phenomena, cartoon characters, or the like."

The role and significance of the character graphic in the toilet training process is discussed in the specification beginning at pg. 6, line 23. The character graphic can play a role in the toilet training process. For example, the character graphic can motivate the child to become toilet trained and can give parents and caregivers an interactive element for use during toilet training.

> Ideally, the character graphic can be a well known figure to the child so that the character graphic can provide a source of comfort for the child and a buddy who reduces stress during the training period. The character graphic may also serve as a third party that the caregiver can use to deflect blame and shame from the child when the child has wet his or her pants.

Application, page 6, lines 26-31.

Timmons does not disclose a character graphic as that term is set forth in the specification. Applicants' point out that the outline 22 of blocks in Timmons is not a "graphic containing an anthropomorphous image, and in particular an image having or suggesting human form or appearance which ascribes human motivations, characteristics or behavior to inanimate objects, animals, natural phenomena, cartoon characters, or the like."

Applicants submit that the Examiner is using an incorrect standard to examine the claims. In numbered paragraph 28 of the Office Action, the Examiner states that "when examining the claims the examiner gives the [word 'character'] the broadest reasonable interpretation, and therefore it is the examiner's position that Timmons [ ] does disclose the claimed invention ...". It is clear that the Examiner has completely ignored the specification. The Examiner's attention is drawn to MPEP 2173.05(a), which states in part: "**When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning**, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art" (emphasis added).

Applicants contend that the specification states the meaning that the term character graphic is intended to have, and the Examiner has failed to examine claim 1 using that meaning in contradiction to MPEP 2173.05(a). The rejection to claim 1 should be withdrawn for at least this reason. Applicants explicitly reserve the right to identify additional errors in the Office Action and

advance further reasons for patentability should the present response not result in withdrawal of the rejection.

B. Rejection Of Claims 1-10 and 13-19 Under 35 U.S.C. § 102 (e)

Claims 1-10 and 13-19 stand rejected under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent 5,766,389 issued June 16, 1988 to Brandon et al. (hereinafter "Brandon"). Applicants respectfully traverse the rejection.

Brandon discloses in Figure 1 a registered graphic 38. Beginning at col. 8, line 60, the patent states:

> As illustrated in FIG. 1, a registered graphic 38 is selectively positioned on front panel 12, and in this illustration comprises a design of a simulated "fly opening 23", typical of a boy's underwear, and a rainbow, sun, clouds, and cars. The registered graphic 38 can be any type of desired pattern, artistic feature, written instructions, or the like, and is desired to be positioned in the article at a selected location. Naturally, registered graphic 38 comprising a simulated fly opening 23 would be totally unacceptable from an aesthetic and/or functional view point if it were located at crotch panel 16 or back panel 14.
>
> Referring to FIG. 2, another training pant 40 is illustrated, which can be typically used for young girls. In this design, a registered graphic 42 includes simulated waist ruffles 29, simulated leg ruffles 31, a rainbow, sun, clouds, wagon and balloon. Again, any suitable design can be utilized for a training pant intended for use by young girls, so as to be aesthetically and/or functionally pleasing to them and the caregiver.

Applicants' claimed structure is not anticipated by Brandon. Independent claims 1, 2 and 3 each recite an active object graphic. The term "active graphic" is defined in the present specification beginning at page 2, line 14, as graphics "constructed to 'disappear' or 'appear' from view, particularly when the child has an accident and the active object graphic is contacted with urine, but also when the product is in use and the disappearance or appearance occurs over time as a result of exposure to the environment, such as molecules in the air." These active graphics "may allow the caregiver to interact with the child and teach the child important lessons regarding toilet training." Application page 2, lines 9-14 and 21-23.

Brandon does not disclose an active graphic as that term is set forth in the specification.

The Examiner's reasoning for rejecting the claims is noted at page 2 of the Office Action: "Brandon discloses ... an active object (sun, the sun rises and sets and therefore is considered to be active) ... ." Applicants' point out that the sun depicted in Brandon is not "constructed to 'disappear' or 'appear' from view, particularly when the child has an accident and the active object

graphic is contacted with urine, [or] when the product is in use and the disappearance or appearance occurs over time as a result of exposure to the environment."

Applicants submit again that the Examiner is using an incorrect standard to examine the claims. In numbered paragraph 28 of the Office Action, the Examiner states that "when examining the claims the examiner gives the [word] 'active' the broadest reasonable interpretation, and therefore it is the examiner's position that [ ] Brandon does disclose the claimed invention ...". It is clear that the Examiner has completely ignored the specification. The Examiner's attention is again drawn to MPEP 2173.05(a), which states in part: "**When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning**, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art" (emphasis added).

Applicant's contend that the specification states the meaning that the term active graphic is intended to have, and the Examiner has failed to examine the claims using that meaning in contradiction to MPEP 2173.05(a). The rejection to claims 1-10 and 13-19 should be withdrawn for at least this reason. Applicants explicitly reserve the right to identify additional errors in the Office Action and advance further reasons for patentability should the present response not result in withdrawal of the rejection.

C. Rejection Of Claims 1-20, 24, 30-31 and 38-39 Under 35 U.S.C. § 103 (a)

Claims 1-20, 24, 30-31 and 38-39 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Brandon in view of Timmons. Applicants respectfully traverse the rejection.

The Examiner posits that it "would have been obvious to one of ordinary skill in the art to add the wetness indicators of Timmons to the training pants of Brandon in order to provide a visual signal that the pad is wetted and assist in determining if a fresh pad is needed. (see Timmons, column 1)".

First, there is absolutely no teaching in the cited references to combine individual components of the graphics from Brandon with individual components of the graphics from Timmons. While Applicants recognize the potential desirability of wetness indicators, they are unable to identify any suggestion within the cited references to combine the different and distinct graphics from multiple references into a single, unified product. If anything, Applicants submit that the hypothetical skilled person would be inclined to replace the graphics of Brandon with the graphics of Timmons.

Second, even th Examiner's characterization of the references recognizes that the references teach away from the claimed invention. The Examiner is apparently proposing to combine the letters of Timmons with the giraffes and cars of Brandon. The Examiner stated that "Timmons discloses the use of wetness indicator graphics used in absorbent articles, in the forms of **letters, which are** located inside blocks and are **unrelated to giraffes and cars** ... ." Office Action, page 5. The Examiner has not stated any basis for selecting **unrelated** graphics from different patents and combining them to form the basis for the rejection. The mere desire to use a wetness indicator does not lead to the present invention. It is only with resort to the present application that the skilled person would derive the present combination of elements. The references cited by the Examiner explicitly recognize that the graphics have decorative and aesthetic aspects, and hence would not merely be aggregated without a specific reason to do so. See, e.g., Timmons col. 3, lines 41-44; Brandon col. 9, lines 8-11; and Howell col. 3, lines 14-18.

The rejection to claims 1-10 and 13-19 should be withdrawn for at least this reason. Applicants explicitly reserve the right to identify additional errors in the Office Action and advance further reasons for patentability should the present response not result in withdrawal of th rejection.

D. Rejection Of Claims 21, 23 and 40 Under 35 U.S.C. § 103 (a)

Dependent claims 21, 23 and 40 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Brandon and Timmons as applied to claims 1-3 and 38 above, and further in view of U.S. Patent 5,389,093 issued February 14, 1995 to Howell. Applicants respectfully traverse the rejection for at least the reasons noted above in regard to the combination of Brandon and Timmons. Accordingly, this rejection should be withdrawn. Applicants explicitly reserve the right to identify additional errors in the Office Action and advance further reasons for patentability should the present response not result in withdrawal of the rejection.

E. Rejection Of Claims 1-3, 22 and 26 Under 35 U.S.C. § 103 (a)

Claims 1-3, 22 and 26 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Brandon in view of U.S. Patent 5,766,212 issued June 16, 1998 to Jitoe et al. (hereinafter "Jitoe"). Applicants respectfully traverse the rejection.

Jitoe discloses a diaper including an indicator 18 "adapted to be visually revealed when the indicator 18 is wetted with urine so that display elements 19 can be visually recognized through the

backsheet 3 and thereby the mother can be reliably informed of a timing for diaper exchange." Col. 3, lines 10-14.

The Examiner posits that it "would have been obvious to one of ordinary skill in the art to add the wetness indicators of Jitoe to the training pants of Brandon in order to for a mother to be reliably informed of a timing of a diaper exchange. (see Jitoe, column 3)". Office Action, page 8.

First, there is absolutely no teaching in the cited references to combine individual components of the graphics from Brandon with individual components of the graphics from Jitoe. While Applicants recognize the potential desirability of wetness indicators, they are unable to identify any suggestion within the cited references to combine the different and distinct graphics from multiple references into a single, unified product. If anything, Applicants submit that the hypothetical skilled person would be inclined to replace the graphics of Brandon with the graphics of Jitoe.

Second, even the Examiner's characterization of the references recognizes that the references teach away from the claimed invention. The Examiner is apparently proposing to combine the flowers of Jitoe with the giraffes and cars of Brandon. The Examiner stated that "Jitoe discloses the use of the graphic to be in the form of **flowers, which is interactively unrelated and unrelated in subject matter to a giraffe driving a car.**" Office Action, page 8. The Examiner has not stated any basis for selecting **unrelated** graphics from different patents to form the basis for the rejection. The mere desire to use a wetness indicator does not lead to the present invention. It is only with resort to the present application that the skilled person would derive the present combination of elements. The references cited by the Examiner explicitly recognize that the graphics have decorative and aesthetic aspects, and hence would not merely be aggregated without a specific reason to do so. See, e.g., Timmons col. 3, lines 41-44; Brandon col. 9, lines 8-11; and Howell col. 3, lines 14-18.

The rejection to claims 1-3, 22 and 26 should be withdrawn for at least this reason.

F. Double Patenting

Claim 2 stands rejected under the judicially created doctrine of obviousness-type double patenting as being obvious over claim 2 of U.S. Patent 6,307,119 issued October 23, 2001 to Cammarota et al. Applicants have enclosed herewith a terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) in order to expedite prosecution of the present application. It is respectfully submitted that the terminal disclaimer overcomes the obviousness-type double patenting rejection.

G. Information Disclosure Statements

The Examiner's attention is drawn to the Supplemental Information Disclosure Statements that were mailed on October 17, 2001 and February 13, 2002. The Examiner is requested to make of record receipt and review of the documents listed therein.

H. Conclusion

The application contains claims 1-24, 26, 30, 31 and 38-40, which are believed to be in condition for allowance, which action is earnestly requested.

Please charge any prosecutional fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-3617.

Respectfully submitted,

M.T. CAMMAROTA ET AL.

By: Thomas M. Gage

Thomas M. Gage
Registration No.: 33,385
Attorney for Applicant(s)

CERTIFICATE OF MAILING

I, Mary L. Roberts, hereby certify that on March 18, 2002 this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

By: Mary L. Roberts

Mary L. Roberts